

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

PHILLIPS 66 (Sweeny Refinery),

Respondent,

and

**Cases 16-CA-087373
16-CA-089250 and
16-CA-089036**

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL
UNION NO. 564,**

Charging Party.

**RESPONDENT'S REQUEST FOR SPECIAL PERMISSION TO APPEAL
FROM THE REGIONAL DIRECTOR'S ORDER DENYING
RESPONDENT'S REQUEST FOR POSTPONEMENT OF HEARING**

Respondent Phillips 66 ("Phillips" or "Respondent") requests special permission to appeal the Regional Director's order denying its request for a brief, 11-day postponement of the hearing presently set for February 21, 2013. As grounds for its request, Phillips would show the Board as follows:

1. On December 27, 2012, the Regional Director issued an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing. Exhibit A. The three underlying charges involve allegations that during the course of a union organizing campaign, Respondent violated the National Labor Relations Act ("NLRA") by: (1) interrogating employees about their union activities and sympathies; (2) threatening employees with loss of benefits if they selected the union as their bargaining representative; and (3) denying off-duty employees and the union

use of its facilities to conduct a union organizing event.¹ *Id.* at ¶¶ 7-9. The consolidated cases are scheduled for hearing before an administrative law judge on February 21, 2013, in Houston, Texas.

2. Phillips timely filed its Answer denying the allegations. Thereafter, on January 22, 2013, Phillips filed a Request for Postponement of Hearing. Exhibit B. As grounds for postponement, Phillips explained that its lead counsel, Mr. Dan Dargene, is scheduled to arbitrate a grievance in Ponca City, Oklahoma, beginning February 20, 2013. The arbitration may not conclude by February 21, 2013. Phillips urged it would be unduly prejudiced if the hearing is not postponed because Mr. Dargene has represented the Company for several years, including on a number of matters specific to the Sweeny Refinery. *See id.* Phillips offered to make itself available for a hearing the weeks of March 4 or 18, 2013. *See id.* Phillips remains available to participate in the hearing on these dates.

3. On January 23, 2013, the Regional Director denied Phillips' request for postponement of the hearing. Exhibit C. As grounds for denial, the Regional Director claims the complaint raises "three simple and straightforward 8(a)(1) allegations;" given the size of Mr. Dargene's firm, "there are numerous other attorneys who could be assigned to represent Respondent at the hearing;" and Phillips has not submitted a counterproposal to the Board's settlement proposal "or made any other effort to resolve this matter prior to hearing." *Id.* at ¶¶ 3-5.

4. Phillips respectfully requests the Board reverse the Regional Director's denial of its postponement request. The complexity of the underlying allegations and the size of Mr. Dargene's firm are irrelevant. Mr. Dargene has represented Phillips for several years —

¹ The union ultimately lost the election and did not seek to set aside the result.

including in connection with all three charges at issue. Mr. Dargene interviewed the key witnesses, researched and analyzed the applicable case law and Board decisions, and compiled the Company's response to each charge. Mr. Dargene fully understands Phillips' defenses to the allegations. Thus, Phillips would be unequivocally prejudiced if the hearing is not postponed and it is forced to use other counsel in light of Mr. Dargene's expertise and familiarity with the charges.

5. Moreover, the fact that Phillips has not submitted a counterproposal to the Board's settlement demand is hardly grounds for denying postponement of the hearing. Phillips has no legal obligation to submit a counterproposal, and it is entirely improper that the Regional Director would expressly rely on this fact in denying Phillips' request for a brief, 11-day postponement. By denying the postponement, the Regional Director is attempting to strong arm Phillips into settlement. This is an abuse of the Regional Director's authority and is highly prejudicial to Phillips.

6. Phillips' request for an 11-day postponement of the hearing is extremely reasonable in light of the circumstances. Mr. Dargene is scheduled to arbitrate a grievance in Ponca City, Oklahoma, beginning February 20, 2013, which may not conclude by February 21, 2013. This arbitration was scheduled long before the hearing in this matter was set. Phillips is not requesting an unreasonably long delay, but is simply seeking a few additional days so the Company's lead counsel can be present for the hearing.

WHEREFORE, Phillips respectfully requests the Board grants it special permission to appeal the Regional Director's order denying postponement of the hearing and that the Board order the hearing be rescheduled for the week of March 4 or 18, 2013.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: /s/ Dan C. Dargene

DAN C. DARGENE

Texas State Bar No. 05384200

DALLAN F. FLAKE

Texas State Bar No. 24055481

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Dallas, Texas 75225

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that on January 29, 2013, a true and correct copy of the above and foregoing instrument was electronically filed with the National Labor Relations Board. Pursuant to the Board's request, a hard copy of this document was served via certified mail, return receipt requested, on the following party this same day:

Eric Wells

International Union of Operating Engineers, Local Union 564

2120 Brazosport Blvd N

Richwood, TX 77531-2306

/s/ Dan C. Dargene

DAN C. DARGENE

14253866.1 (OGLETREE)

**UNITED STATES OF AMERICA
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PHILLIPS 66 (Sweeny Refinery)

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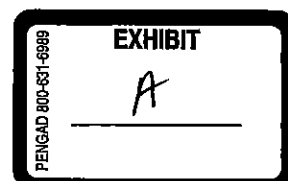
**ORDER CONSOLIDATING CASES
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board, and to avoid unnecessary costs or delay, IT IS ORDERED THAT the charges in Cases 16-CA-087373, 16-CA-089250, and 16-CA-089036, filed by International Union of Operating Engineers, Local Union No. 564 (Charging Party or Union) against Phillips 66 (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act by engaging in the following unfair labor practices:

1.

The charges in the above cases were filed by the Charging Party and were served upon Respondent by regular mail on the dates indicated, as set forth in the following table:



Case Number	Amendment	Date Filed	Date Served
16-CA-087373		August 15, 2012	August 16, 2012
16-CA-087373	First amended charge	October 3, 2012	October 4, 2012
16-CA-089250		September 14, 2012	September 14, 2012
16-CA-089036		September 11, 2012	September 12, 2012

2.

At all material times, Respondent has been a Delaware corporation with a place of business located in Old Ocean, Texas, engaged in the operation of a petrochemical refinery.

3.

During the 12-month period ending November 30, 2012, Respondent in conducting its operations described above in paragraph 2, purchased and received at its Old Ocean, Texas facility goods valued in excess of \$50,000 directly from points outside the State of Texas.

4.

At all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act:

Darren Fields	Plant Manager
Tynes Schroller	Training Supervisor
Desiree Cromwell	Team Leader
Mike Saiz	Human Resources Director

7.

Respondent, by the individuals named below, about the dates and at the locations opposite their names, interrogated employees about their union activities and sympathies and the union activities and sympathies of other employees:

Agent	Date	Location
(a) Tynes Schroller	August 14, 2012	Old Ocean, Texas facility
(b) Desiree Cromwell	September 11, 2012	Old Ocean, Texas facility

8.

About August 14, 2012, Respondent, by Training Supervisor Tynes Schroller, at Respondent's Old Ocean, Texas facility, threatened its employees with loss of benefits if they selected the union as their bargaining representative.

9.

About September 11, 2012, Respondent, by Human Resources Director Mike Saiz, at Respondent's Old Ocean, Texas facility, denied its off-duty employees and the Union use of Respondent's Old Ocean Voluntary Fire Department building to conduct a union organizing event.

10.

By the conduct described above in paragraphs 7 through 9, Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

11.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before January 10, 2013, or postmarked on or before January 9, 2013.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of

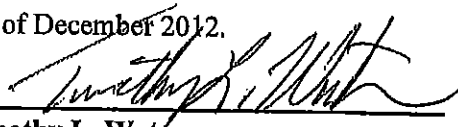
the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on February 21, 2013, 9:00 a.m. at the hearing room in the offices of the National Labor Relations Board, Region 16, Houston Resident Office, Mickey Leland Federal Building, 1919 Smith Street, Suite 1545, Houston, Texas 77002 and on

consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Fort Worth, Texas, this 27th day of December 2012.



Timothy L. Watson
Acting Regional Director
National Labor Relations Board, Region 16
Room 8A24, Federal Office Bldg.
819 Taylor Street
Fort Worth, TX 76102

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 16-CA-087373, 16-CA-089250,
and 16-CA-089036

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

MIKE SIAZ, HR DIRECTOR
PHILLIPS 66 (SWEENEY REFINERY)
PO BOX 866
SWEENEY, TX 77480

ERIC WELLS, ORGANIZER
INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL UNION 564
2120 BRAZOSPORT BLVD N
RICHWOOD, TX 77531-2306

DAN C. DARGENE, ATTORNEY
OGLETREE DEAKINS NASH SMOAK &
STEWART, P.C.
500 PRESTON COMMONS
8117 PRESTON RD
DALLAS, TX 75225

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8 1/2 by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board: No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

PHILLIPS 66 (Sweeny Refinery),

Respondent,

and

**Cases 16-CA-087373
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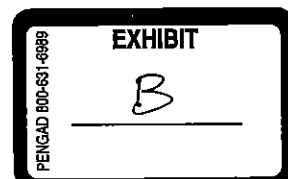
**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL
UNION NO. 564,**

Charging Party.

PHILLIPS 66'S REQUEST FOR POSTPONEMENT OF HEARING

Pursuant to 29 C.F.R. § 102.16(a), Respondent Phillips 66 ("Phillips") respectfully requests a postponement of the hearing for the good and sufficient grounds set forth below.

1. This matter is presently set for hearing beginning February 21, 2013.
2. Lead counsel for Phillips, Mr. Dan Dargene, is scheduled to arbitrate a grievance in Ponca City, Oklahoma, beginning February 20, 2013. The arbitration may not conclude by February 21, 2013. Mr. Dargene has represented Phillips for several years, including on a number of matters specific to the Sweeny Refinery. Consequently, Phillips would be unduly prejudiced if the hearing is not postponed.
3. Phillips is available to participate in the hearing the weeks of either March 4, 2013 or March 18, 2013.
4. Phillips attempted to confer with the Board on multiple occasions regarding this request, but was unable to receive any input from the Board.



WHEREFORE, Phillips respectfully requests the hearing of this matter be postponed for the reasons set forth above.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By: /s/ Dan C. Dargene

DAN C. DARGENE

Texas State Bar No. 05384200

DALLAN F. FLAKE

Texas State Bar No. 24055481

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8117 Preston Road
Dallas, Texas 75225
(214) 987-3800
(214) 987-3927 (Fax)

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that on January 22, 2013, a true and correct copy of the above and foregoing instrument was electronically filed with the National Labor Relations Board. Pursuant to the Board's request, a hard copy of this document was served via certified mail, return receipt requested, on the following party this same day:

Eric Wells
International Union of Operating Engineers, Local Union 564
2120 Brazosport Blvd N
Richwood, TX 77531-2306

/s/ Dan C. Dargene

DAN C. DARGENE

RECEIVED

JAN 25 2013

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

PHILLIPS 66 (Sweeny Refinery)

Respondent

Cases 16-CA-087373,
16-CA-089250
and 16-CA-089036

and

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL
UNION NO. 564

Charging Party

**ORDER DENYING RESPONDENT'S REQUEST FOR
POSTPONEMENT OF HEARING**

1.

The captioned cases are scheduled for hearing before an Administrative Law Judge on February 21, 2013, in Houston, Texas. On January 22, 2012, Respondent filed a Request for Postponement of Hearing.

2.

In its Request for Postponement, Respondent states that lead counsel, Mr. Dan Dargene, is scheduled to arbitrate a grievance in Ponca City, Oklahoma, beginning February 20, 2013 and that the arbitration may not conclude by February 21, 2013.

3.

The complaint raises three simple and straightforward 8(a) (1) allegations.

PENGAD 800-631-6989

EXHIBIT

C

4.

Counsel for Respondent is Ogletree Deakins, employing hundreds of attorneys specializing in labor and employment law. Assuming Attorney Dan Dargene is unavailable on the date of the hearing, there are numerous other attorneys who could be assigned to represent Respondent at the hearing and who would have ample time to prepare to defend these three simple and straightforward 8(a)(1) allegations.

5.

Further, Respondent has had substantial time to review the Board's settlement proposal which was submitted to Respondent on November 29, 2012. Respondent has not submitted a counterproposal or made any other effort to resolve this matter prior to hearing.

6.

Under these circumstances, Respondent not would be unduly prejudiced by proceeding as scheduled. Therefore, having duly considered the matter **IT IS HEREBY ORDERED** that Respondent has failed to state good cause for rescheduling the hearing in this matter. Accordingly, Respondent's request to reschedule this matter is denied.

DATED at Fort Worth, Texas this 23rd day of January, 2013.

/s/ Martha Kinard

MARTHA KINARD, Regional Director
National Labor Relations Board
Region 16
Room 8A24, Federal Office Bldg
819 Taylor Street
Fort Worth, Texas 76102